



INTERIOR BOARD OF INDIAN APPEALS

Legal Aid of North Carolina, Inc. v. Eastern Regional Director, Bureau of Indian Affairs

38 IBIA 290 (01/22/2003)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

LEGAL AID OF NORTH CAROLINA, INC.,
Appellant

v.

EASTERN REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing Appeal and
: Affirming Decision
:
:
: Docket No. IBIA 03-42-A
:
:
: January 22, 2003

This is an appeal from a November 6, 2002, decision of the Eastern Regional Director, Bureau of Indian Affairs (Regional Director; BIA), which denied the request of Legal Aid of North Carolina, Inc. (Appellant), for payment of attorney fees in connection with a child custody proceeding in the Tribal court of the Eastern Band of Cherokee Indians. For the reasons discussed below, the Board docketed this appeal and affirms the Regional Director's decision.

The Regional Director denied Appellant's request on the basis of 25 U.S.C. § 1912(b) and 25 C.F.R. § 23.13(h). He held that payment of attorney fees in this case was not authorized by the statute and was specifically precluded by the regulation. As the Regional Director's interpretation of the statute and regulation clearly appeared to be correct, the Board ordered Appellant to show why the November 6, 2002, decision should not be summarily affirmed.

In its response to the Board's order, Appellant contends that 25 C.F.R. § 23.13(h) "is referring to child custody proceedings within a tribal court that do not involve the provisions of the Indian Child Welfare Act [(ICWA)]." It continues: "In the instant case, the [Eastern] Cherokee Tribal Court has applied the provisions of [ICWA] to the proceeding in Tribal Court and therefore, the Defendant in said action * * * is entitled to an appointed attorney whose services should be compensated for in accordance with the act."

Plainly, Appellant misunderstands both the relevant provision of ICWA and BIA's regulation implementing that provision. Subsection 102(b) of ICWA, 25 U.S.C. § 1912(b), authorizes BIA to pay attorney fees, under certain circumstances, in child custody proceedings in State courts. It does not authorize BIA to pay attorney fees in child custody proceedings in Tribal courts. 25 C.F.R. § 23.13(h) makes this limitation clear. It provides: "Payment for appointed counsel does not extend * * * to Indian families involved in Indian child custody proceedings in tribal courts."

Appellant fails to show any error in the Regional Director's November 6, 2002, decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed and the Regional Director's decision is affirmed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathleen R. Supernaw
Acting Administrative Judge